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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,129	06/14/2001	Albrecht Weiss	LWEP:103-US	5852

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EXAMINER

SUNG,CHRISTINE

ART UNIT PAPER NUMBER

2878

DATE MAILED: 04/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

09/868,129

WEISS, ALBRECHT

Examiner

Christine Sung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Priority Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

On page 1, line 24, the specification reads “die” but should read --dye--.

Further, on page 6, line 15, the specification reads “a differing rates” but should read --at differing rates--.

Appropriate correction is required.

### *Claim Objections*

2. Claims 1-21 are objected to because of the following informalities:

Claim 1 reads “an fluorescence object” but should read --a fluorescence object--.

Claims 1 and 8-11 all reference filters that are disclosed as “(23; 28, 29, 31, 32)” but should read --23, 28, 29, 31, 32-- wherein the correction is replacing the semicolon after 23 with a comma.

Further, claim 1 part b also includes a period at the end of the sentence, which should be a comma.

Claim 10, part a, discloses “filter draws (21; 21a, 21b)” but should read --filter draws (21, 21a, 21b)--.

3. Claims 12, 16 and 18-21 disclose one or more of the following elements: A, B, C or D. The claims are objected to because they do not place the referenced elements in parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in

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the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Appropriate correction is required.

4. The balance of the claims are objected to for being dependent from an objected claim.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 recites the limitation "a selective filter" in part b of the claim. However, in part c of the claim, the filter is referred to as "the individual filters." It is unclear if there is a plurality of filters or if there is only a single filter.

8. The balance of claims are objected to as being dependent on an already rejected claim.

***Allowable Subject Matter***

9. Claims 1-21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

10. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art of record discloses that the filters are continuously adjusted so that by attenuating the associated excitation bands, all fluorescence intensities are adjusted to their intensity set point values. Although some prior art discloses the adjustment of the illumination beam with a filter, it is only adjusted once, not continuously as disclosed by the invention.

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. US Patent 5,371,624-This reference discloses the creation of multiple excitation bands using a filter, and the output of an emission band, however, it does not disclose the continuous adjustment of the filters to a setpoint value.
- b. US Patent 6,510,001- This reference discloses an optical arrangement that extracts spectral elements that can be adjusted to the excitation wavelength.
- c. US Patent 6,225,636-This reference discloses a method for detecting fluorescence of a sample, using several filters and creating excitation and emission bands.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine Sung whose telephone number is 703-305-0382. The examiner can normally be reached on Monday- Friday 7-4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on 703-308-4852. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-0956 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


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CS

April 16, 2003



**DAVID PORTA**  
**SUPERVISORY PATENT EXAMINER**  
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